IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs September 25, 2007

STATE OF TENNESSEE v. MATTHEW LEE SWEET

Direct Appeal from the Criminal Court for Greene County
No. 05CR018 James E. Beckner, Judge

No. E2007-00202-CCA-R3-PC - Filed April 15, 2008

The appellant, Matthew Lee Sweet, was convicted by a jury in the Greene County Criminal Court of two counts of aggravated child abuse, and he received an effective sentence of twenty-five years in the Tennessee Department of Correction. No appeal was filed. Thereafter, the appellant filed a petition for post-conviction relief and was granted a delayed appeal. On appeal, the appellant alleges that the trial court erred by refusing to allow him to impeach the testimony of the victim's mother, the trial court erred by "inquiring sua sponte, and in the presence of the jury, whether the State was going to release a witness from her material witness bond," and the evidence is not sufficient to sustain his convictions. Upon our review of the record and the parties' briefs, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

William Lewis Ricker and Kim C. Miller (on appeal), and Gerald Aidson (at trial), Greeneville, Tennessee, for the appellant, Matthew Lee Sweet.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; C. Berkeley Bell, Jr., District Attorney General; and Cecil Mills, Jr., Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

The appellant was charged by presentment with two counts of aggravated child abuse. Count one alleged that the appellant committed "aggravated child abuse of a child six years of age or less, on or about April 25th, 2004, on which date the victim suffered an orbital fracture and rib fractures and an arm fracture and a leg fracture." Count two alleged that the appellant committed "aggravated

child abuse of a child six years of age or less, during a period of time at least seven days before April 27th, 2004, on which date the victim suffered a fracture of the upper left forearm and nothing else."

At trial, the State's first witness was Donna Myers, an employee of the Department of Children's Services (DCS). On April 26, 2004, Myers went to Laughlin Hospital to investigate the suspected abuse of the appellant's six-week-old son, Isaiah. Myers recalled that when she saw the victim, he was crying, upset, and "screaming to the top of his little lungs." Myers saw marks on the victim's rib cage and legs, leading her to believe that the child had been abused.

Myers and Detective David Crum interviewed the appellant; the victim's mother, Christina Putney Renner;[1] and the appellant's mother, Carol Glover, at the hospital. The appellant told Myers and Detective Crum that Renner had dropped the victim in his car seat, but he did not hit the ground and was not injured. Thereafter, bruises showed up on the victim's body. The appellant told Myers that the victim had been "crying real bad with loud piercing screams." The appellant admitted that he had shaken the victim on April 22, 2004. Myers asked the appellant why he had not taken the victim to the doctor, and the appellant replied that he had no insurance.

David G. Slagel, a special agent with the Tennessee Bureau of Investigation, testified that on April 28, 2004, he met with Detective David Crum to assist in the investigation. On that date, Agent Slagel and Detective Crum interviewed the appellant at his residence. After being advised of and waiving his Miranda rights, the appellant initially said that he did not know how the victim was hurt. However, later in the interview, the appellant said that he was responsible for the victim's injuries. The appellant said that he and Renner were watching television when the victim began crying. The appellant stated that he picked up the victim from the swing in which he was sitting and threw him into the air several times. The appellant said that he nearly missed catching the victim and had to grab one of his legs. The appellant conceded that he should have stopped at that point, but he threw the victim into the air once more. The appellant did not catch the victim, and the victim fell into the swing and "cartwheeled." The appellant said that the victim's head struck the lower bar, and his side hit an upper bar. The appellant also said that he had dropped the victim a couple of weeks prior to this incident.

Dr. Timothy Louis Fuller, a pediatrician with the Medical Group of Greeneville, testified that on April 26, 2004, he examined the six-week-old victim at the pediatric ward at Laughlin Hospital. He was advised that the victim had been brought in with breathing problems. He was also advised that the emergency room physician noticed some bruising on the victim's legs and ribs and also noticed "some cracking" when she touched the victim's ribs. Dr. Fuller stated that x-rays revealed the victim had four rib fractures on his right side and a "significant" bruise on his lung in the area of the rib fractures. Dr. Fuller noticed "some fairly significant bruising on [the victim's] right side." Bruising on both sides of the victim's legs indicated someone had grasped the child "very hard with their fingers."

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[1] At the time of the offense, the name of the victim's mother was Christina Putney. She married prior to trial and changed her name to Christina Putney Renner.

Dr. Fuller testified that the victim had elevated levels of potassium and significant elevation in his liver enzymes, indicating that the victim had "some crush injury to his liver, as well as to his rib cage and to his lung." Dr. Fuller noted that when the victim came into the hospital, "he had some bleeding into the chest between the lung and the rib cage." Also, the victim had a fracture of the orbit behind his right eye. Dr. Fuller stated that the victim was "obviously in pain" and that "he was having respiratory insufficiency." Within twenty-four hours of hospitalization, the victim experienced an "increase in respiratory effort." Dr. Fuller spoke with Dr. Rick Mohan, a pulmonologist with the Johnson City Medical Center, and the victim was "aerovaced" there for treatment.

Dr. Fuller opined that the victim's injuries were "very severe." He testified that the injuries were not the type occurring from minor trauma or routine handling; instead, the injuries were the result of a "highly violent type of force that was applied to this child." Dr. Fuller asserted, "Barring this child being in a serious accident, like a serious high speed motor vehicle accident, there was no explanation for the injuries," especially considering the "degree of crush injury to the right side of the chest and the fracture of the orbit." Dr. Fuller discounted the notion that the injuries occurred from the victim being dropped. Dr. Fuller concluded that the injuries were caused by child abuse. Dr. Fuller said that if the victim had not had medical intervention when he did, the injuries would have been fatal.

Dr. Ricky Thomas Mohon, the Director of the pediatric critical care unit at Johnson City Medical Center, testified that the victim was admitted to the facility following a referral from Dr. Fuller. Dr. Mohon said that when the victim arrived at the medical center, he had "barely stable vital signs" and difficulty breathing. Medical personnel drained bloody fluid from around the victim's lungs, which seemed to help him breathe. The victim had multiple rib fractures and bruising to the right lung, and fluid had collected between his lung and his chest wall. Additionally, the victim had fractures in his extremities.

Dr. Mohon testified that the victim's injuries were severe; there was no air in his right lung and the multiple rib fractures would have caused a lot of pain and could have eventually resulted in his death. Dr. Mohon deduced that the injuries were one to four days old. He stated that absent any history of a traumatic event, shaken baby syndrome "would be the only consistent diagnosis. . . . That he was non-accidental trauma." The doctor maintained that the appellant's explanation for the injuries was not "consistent with the severity of his injuries." Dr. Mohon concluded that the injuries were caused by sustained force directly applied to the chest wall to break the ribs; in other words, the victim had to have been thrown or squeezed very hard.

Jennifer Louise Bowman testified that in April 2004, she lived in an apartment near the appellant's apartment. During an interview on April 27, 2004, she told Detective Crum that she had babysat the victim the weekend of April 16, 2004. At that time, the victim had no visible bruising. Later, within a week of the victim's hospitalization, Bowman went to the apartment the appellant shared with Aaron Barnes. Renner, the victim's mother, was also there. The adults were in the living room, smoking marijuana and "socializing." The victim, who was in the bedroom, started to

cry. The appellant jumped up and went into the bedroom where the victim was and slammed the door. Bowman recalled that the victim "squealed out" and then was silent. She said that "[t]he baby cried out again. It squealed out really bad, then it stopped, then it squealed out again." Bowan looked at Renner, and Renner looked at Bowman "like she couldn't do anything." The appellant returned to the living room, leaving the victim in the bedroom. The victim continued to cry for several minutes. Bowman did not ask what happened because she was scared. She said that although the appellant had never been temperamental with her, he had a "[m]ean" and "[n]asty" temper.

Aaron Barnes testified that in April 2004, he shared an apartment with the appellant. On April 27, 2004, Barnes spoke with Detective Crum about an incident that happened at the apartment on April 17 or 18, 2004. The appellant, Barnes, Renner, Bowman, Billy Shelton, and the victim were at the apartment. The adults were having a party and smoking marijuana. Barnes was in the living room, and Renner was in the kitchen, cooking for the party. The victim was in a bedroom, and he began "whining a little bit." Renner sent the appellant to check on the victim. Barnes recalled that when the appellant went in the bedroom, "the baby started screaming and then it shut up real quick. I mean a really long scream." Barnes stated, "It wasn't loud at first, you know. It was just like a whine, and then after [the appellant] went in there and shut the door, it was a loud and pretty long [scream] and then it shut up, just completely." Barnes said he did not know what happened in the bedroom, explaining, "I didn't know if he, you know, may have gave it something to calm the baby down, you know, give it a bottle or whatever." Barnes maintained that the victim had stopped crying by the time the appellant returned to the living room. Barnes remembered the specific weekend this happened because he did not have to work that weekend.

Detective Beth Dyke of the Greeneville Police Department testified that she assisted with the investigation and was present when Detective Crum interviewed the appellant on April 27, 2004. After being advised of and waiving his Miranda rights, the appellant said the victim had been "screaming bloody murder for like three or four days." The appellant said he picked up the victim. The victim was breathing, but his ribs "were making a popping noise." The appellant thought something was wrong with the victim. The appellant rubbed the victim's back and legs, and the victim screamed louder. The appellant saw bruises on the victim's legs.

Detective Dyke testified that Detective Crum asked the appellant if he had hurt the victim. The appellant responded, "I swear on my child's life I've not seen anyone do anything." The appellant said that when he became frustrated with the victim, he walked away. However, the appellant told Detective Crum, "[I]t had to be one of us, I know it was." Additionally, the appellant told Detective Dyke, "I have a temper. . . . That's the only thing I'm not going to lie about." Detective Dyke recalled that the appellant "wasn't emotional at all" during the questioning.

Dr. Laura Urban, an ophthalmologist, testified that she saw the victim at Laughlin Hospital on April 26, 2004. Dr. Urban stated that a CT scan of the victim showed the victim had a right orbital fracture. She said the bone behind the victim's right eye was not displaced; there was only a crack in the bone. Dr. Urban opined that the injury had occurred within twenty-four hours of the

examination and was caused by a solid object contacting the bone with some force, such as a blow from a fist.

Detective David Crum of the Greeneville Police Department testified that he had been trained to investigate child abuse. On April 26, 2004, Detective Crum was notified that an injured child was at Laughlin Hospital and went to the hospital to investigate. Officers Roger Self and Craig Duncan were at the hospital when Detective Crum arrived. Detective Crum spoke with the two officers; thereafter, DCS Investigator Myers arrived.

Detective Crum talked with the appellant's mother, Carol Glover, in the hospital's waiting room. After speaking with Glover, Detective Crum spoke with the appellant. The appellant said the victim had been crying for about one week. The appellant noticed some bruises on the victim's legs and thought he might need a doctor; however, the appellant did not have insurance. The appellant surmised that the injuries could have been caused by his roommate, who "one night earlier in the week had got up and gone in and fed the baby, according to [Barnes]." He also said the culprit could be Bowman, who had kept the victim at least one week prior to the victim's hospitalization.

Next, Detective Crum spoke with Renner. Afterward, Detective Crum and Myers went to the pediatric intensive care unit to see the victim. Based on the victim's injuries, Detective Crum concluded that the injuries were not accidental. Detective Crum spoke with Renner again, and she denied knowing how the victim was injured.

The next day, April 27, 2004, the appellant came into the police department and spoke with Detective Crum. The appellant said that the victim had been crying quite a bit for three or four days. On the night of April 25, 2004, the appellant, the victim, and Renner went to Glover's house to spend the night. The appellant recalled that the bruises had been on the victim's legs for three or four days. The appellant said that he did not hurt the victim and that he had not seen anyone hurt the victim.

On April 28, 2004, Detective Crum interviewed the appellant again. During his statement, the appellant said that on the previous Sunday, April 25, he and Renner smoked marijuana at his apartment around 1:00 or 2:00 p.m. At approximately 3:30 or 4:00 p.m., the appellant and Renner were watching television in the living room, and the victim was in a bedroom. When the victim woke up, the appellant checked on him. He removed the victim from his swing and began tossing him in the air. The appellant tossed the victim about two feet above his head. On one toss, the appellant did not catch the victim as he was coming down. The victim fell, striking the "tray part" of the swing with his side and hitting his head on a metal pole on the swing. The victim immediately started crying. Renner came into the bedroom and asked what was wrong. The appellant told her he thought the victim was hungry. The appellant tried to feed the victim, but he took only two ounces of formula. When the victim did not eat more, the appellant knew something was wrong. The appellant became scared and decided to go to his mother's house. At 8:00 or 9:00 p.m., the appellant, Renner, and the victim left the apartment to go to Glover's house. The victim cried during the trip and then fell asleep.

The next day, April 26, 2004, the appellant picked up the victim and felt his ribs "popping." The appellant saw "little spots" where the victim had struck the swing the previous day and knew he needed to take the victim to a doctor. The appellant told Detective Crum that he had been feeling frustrated recently because he did not have a job and was not getting along well with Renner. The appellant said he had been thinking about all of the things they could be doing if they had not had the victim. The appellant also said:

> I dropped him about three weeks ago when I was walking to go to the garden and tripped. I grabbed his leg as he was falling down. I may have grabbed him by the legs from some near misses when throwing him up. There's been a couple of times I've grabbed him by the legs to pull him back and change his diaper and I noticed the bruises in a couple of days.

Dr. Maryann R. Neal, a pediatric radiologist at Johnson City Medical Center, testified that she reviewed the x-rays taken on April 30, 2004. The x-rays revealed multiple fractures on both sides of the victim's chest and fluid accumulated in his chest. There were four fractures to the victim's right ribs and one to his left ribs. The fractures were less then seven days old. When a follow-up x-ray was taken on June 2, 2004, Dr. Neal saw additional fractures that had not been evident on the first x-rays. She explained that "when the fractures first occur, there's just the break, and then we saw the fluid; but as the fractures heal, there's more bone formation around those fractures and they actually show up better, and that is a very typical finding in rib fractures." Upon review of the initial x-rays and the follow-up x-rays, Dr. Neal deduced that the victim had five fractures to his right ribs and five fractures to his left ribs, including one rib which was fractured in two places. Additionally, the victim's left forearm and upper arm showed signs of prior fracture. The injury to the victim's left forearm was older than the injuries to the victim's ribs. Also, the victim's left lower leg had been fractured. In total, the victim had eighteen separate fractures to ribs, arms, and legs.

Dr. Neal testified that "the rib fractures actually occurred at the pressure points of the thumb and the fingertips." She stated that these type of fractures can occur from a combination of squeezing and shaking. In her opinion, the injuries were a result of shaken baby syndrome. Dr. Neal asserted, "These type[s] of injuries usually occur secondary to a forceful to and fro motion. . . . The rib fractures are very typical for squeezing." Dr. Neal maintained that the injuries could not have resulted from the victim being tossed into the air and striking the swing. She stated that the fluid on the victim's lungs at the time of admittance could have been life threatening.

Regarding the timing of the injuries, Dr. Neal testified as follows:

> There is a . . . bucket handle fracture of the left upper arm, here. There's some healing, meaning that there appears to be evidence of a prior fracture in the left forearm, the ulna, the . . . other bone of the forearm.

. . . .

> The fact that it's healing indicates that it has occurred seven days or more. Okay? It's not the acute fracture that the others – we have seen in the others.
>
> . . . .
>
> The age of the fractures that occurred . . . in the timeframe of April 28th to April 30th, all of them, except for the one we just discussed, are acute fractures occurring less than seven days.

The first defense witness was Christina Putney Renner, the victim's mother. She stated that approximately one and one half weeks before the victim's hospitalization, the appellant, Barnes, Bowman, and she were at the appellant's apartment smoking marijuana and "socializing." She did not recall the victim crying during the party; however, she said that "[i]f he cried, I would go back there and take care of him."

Renner testified that on the morning of April 26, 2004, the appellant came out of the bedroom and told Renner to feel the victim's ribs because they were "cracking." Renner told the appellant that they needed to go to the hospital. Renner recalled that the night before the victim's hospitalization, the victim "was fussing a little bit. I mean, he wasn't really crying. I mean, all babies cry." Renner denied being responsible for the victim's injuries or knowing who was responsible. However, she acknowledged that she told Detective Crum that sometimes when the victim cried, the appellant went into the bedroom with the victim. Renner said the victim "would cry harder after [the appellant] took him in there." The last occurrence was within a "week or so" of the victim's hospitalization.

Renner testified that she and the appellant corresponded with each other while the appellant was in jail and that in her letters she told the appellant she wanted to reconcile. Counsel asked Renner if she knew what happened to the victim. She stated that she did not. Counsel then attempted to show Renner a letter. Following a bench conference, the trial court ruled counsel could not ask Renner a speculative question.

The appellant's mother, Carol Ann Glover, testified that the appellant, Renner, and the victim spent the night at her house on Sunday, April 25, 2004, arriving at 9:00 or 9:30 p.m. After they arrived, Glover held the victim, rocked him, and sang to him. She said the victim was pleasant and smiled at her. She recalled, "He went right to sleep, just cuddled up in my arms and I put him in his baby bed and he was sound asleep." Glover got up to get ready for work at 3:00 a.m. She checked on the victim and he was sound asleep. When she left for work around 4:00 a.m., the victim was "a peaceful, sleeping child."

Based upon the foregoing proof, the jury found the appellant guilty of two counts of

aggravated child abuse. The trial court imposed a twenty-five-year sentence for each count, to be served concurrently. The appellant's trial counsel did not file a notice of appeal or seek to withdraw from representation. The appellant filed for post-conviction relief, seeking a delayed appeal based upon counsel's failure to pursue an appeal or withdraw. The appellant was granted a delayed appeal, which is the subject of the instant case.

II. Analysis

A. Admission of Letter

As his first issue on appeal, the appellant argues that he should have been allowed to introduce the letters written by Renner to the appellant in order to impeach Renner's testimony at trial. We conclude that the appellant is not entitled to relief.

During her testimony for the defense, Renner admitted that she and the appellant corresponded while he was in jail. Renner identified some letters she had written to the appellant during that time expressing her desire to reconcile with him. In the letters, Renner also denied harming the victim. Renner testified that she could not remember what happened when Barnes and Bowman were at her apartment, except that they were all smoking marijuana and "socializing."

After further questioning, the following colloquy occurred:

> [Defense counsel:] Okay. As you sit here today, what did you think happened to Isaiah?
>
> [The State:] Objection, your Honor –
>
> The Court: Sustained.
>
> [The State:] – to what she thinks.
>
> [Defense counsel:] Based on all the facts that you know, do you know what happened to Isaiah?
>
> [Renner:] No, I do not.
>
> [Defense counsel:] Okay. I hand you one more letter, please.
>
> [The State:] Your Honor, may we approach?
>
> The Court: You may.

During the bench conference, the trial court told defense counsel that Renner could not

speculate as to whom she thought had abused the child. Defense counsel then approached Renner, took the letter, and stated that he was finished with the witness.

On appeal, the appellant argues that someone else caused the child's injuries. He maintains that Renner wrote in the letter "that she knew who was responsible for the child's injuries . . . [but she] changed her story before trial." The appellant asserts that he

> attempted to elicit from her what facts she knew to cause her to believe another person was responsible for the child's injuries. When she was non-responsive to his questions, the [appellant] attempted to impeach her with her written correspondence and the Judge interfered with her impeachment. The [appellant] should have had the opportunity to impeach her testimony with her prior inconsistent written statements to present his defense. The Judge's interference prevented the [appellant] from presenting his defense in violation of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment.

Initially, we note that while the appellant challenges the trial court's failure to allow him to use Renner's letter to impeach her, he failed to make an offer of proof regarding the letter or to include the letter in the record on appeal. Without the letter, we have no means of determining whether Renner's prior statements were inconsistent with her trial testimony. See State v. Galmore, 994 S.W.2d 120, 125 (Tenn. 1999) (stating that a defendant is not required to make an offer of proof, but in certain circumstances, an offer of proof is the only way to demonstrate prejudice). Therefore, the failure to include the pertinent portion of the record results in waiver of the issue on appeal. See Tenn. R. App. P. 24(b).

Moreover, we find no merit to the appellant's claim that he was unable to present his defense because of judicial interference. The record is devoid of any evidence to support such a claim. The appellant never explained to the trial court that he sought to use the letter to impeach Renner's testimony. Indeed, the appellant never made any argument regarding the propriety of admitting the letter. See State v. Banes, 874 S.W.2d 73, 82 (Tenn. Crim. App. 1993). Further, following the trial court's admonition, counsel made no effort to continue his examination of Renner. The appellant is not entitled to relief.

B. Trial Court's Comment

The appellant next complains that the trial court erred by "inquiring sua sponte, and in the presence of the jury, whether the State was going to release a witness from her material witness bond." The appellant argues that he was prejudiced because the "trial court's comment in the presence of the jury bolstered this witness's testimony so much that the jury returned a verdict of guilty."

During cross-examination of Jennifer Bowman, defense counsel asked Bowman where she resided. Bowman stated her address. Defense counsel next asked Bowman if she had spent the previous evening at her address, and Bowman responded in the negative. Then, the following colloquy occurred:

> [Defense counsel:] Where did you stay at last night?
>
> [Bowman:] In the Greene County Detention Center.
>
> [Defense counsel:] Okay. How long have you been down there?
>
> [Bowman:] Overnight.
>
> [Defense counsel:] Okay. Why are you there?
>
> [Bowman:] To come to court today. To be here for court.
>
> [Defense counsel:] So you're telling this jury – you're asking this jury to believe that they've put you in the detention center to make sure you show up for court today?
>
> [Bowman:] Because I was scared to come to court.
>
> [Defense counsel:] You [were] arrested for that reason?
>
> [Bowman:] Yes.

Following the State's redirect examination, the court excused Bowman. The court then asked the State, in the jury's presence, "Are you going to release her from her material witness bond?" The State replied, "Yes, your Honor."

Initially, we note that the appellant did not object at any point during the trial to the trial court's question. See Tenn. R. App. P. 36(a); Kelly v. State, 477 S.W.2d 768, 770 (Tenn. Crim. App. 1972); State v. Roy D. Wakefield, No. M2005-01136-CCA-R3-CD, 2006 WL 1816323, at *8 (Tenn. Crim. App. at Nashville, June 29, 2006), perm. to appeal denied, (Tenn. 2006). Moreover, the issue was raised by the appellant's own cross-examination of the witness.

At the motion for new trial hearing, the trial court remarked,

> I can't, for the life of me, remember why I was prompted to make that inquiry at the time . . . . But I would agree that it was not material to the case and probably was something, had I thought about it, I wouldn't have said in front of the jury, but I can't see how it could

> have possibly have had any adverse impact on the [appellant] in the case, or really, the State, either. It certainly would not – I don't think anyone could logically argue that that would influence the jury one way or the other in the case.

We agree with the trial court. While the better practice would have been to ask the question out of the presence of the jury, we conclude that there was no prejudice suffered by the appellant. The jury was aware, from the appellant's own line of questioning, that Bowman was not testifying voluntarily. The appellant is not entitled to relief on this issue.

C. Sufficiency of the Evidence

On appeal, a jury conviction removes the presumption of the appellant's innocence and replaces it with one of guilt, so that the appellant carries the burden of demonstrating to this court why the evidence will not support the jury's findings. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). The appellant must establish that no reasonable trier of fact could have found the essential elements of the offense beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); Tenn. R. App. P. 13(e).

Accordingly, on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. See State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). In other words, questions concerning the credibility of witnesses and the weight and value to be given the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact, and not the appellate courts. See State v. Pruett, 788 S.W.2d 559, 561 (Tenn. 1990).

The appellant was charged with two counts of aggravated child abuse. Tennessee Code Annotated section 39-15-401(a) (2006) provides that "[a]ny person who knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury" has committed child abuse. Aggravated child abuse is child abuse when "[t]he act of abuse . . . results in serious bodily injury to the child." Tenn. Code Ann. § 39-15-402(a)(1) (2006).

Specifically, on count one, the jury found the appellant guilty of "aggravated child abuse of a child six years of age or less, on or about April 25th, 2004, on which date the victim suffered an orbital fracture and rib fractures and an arm fracture and a leg fracture." The proof at trial revealed that the victim was hospitalized on April 26, 2004, because of an orbital fracture, arm fractures, a leg fracture, and multiple fractures to his ribs. The appellant acknowledged that he could have caused the victim's injuries, but he claimed the injuries occurred accidentally. The appellant said that on April 25, he tossed the victim into the air and failed to catch him, and the victim crashed into a swing. Bowman testified that the weekend before the victim's hospitalization, she babysat the victim and he was uninjured. Further, Renner, the victim's mother, corroborated the time frame for the injuries described by the appellant. The medical proof revealed that the victim's rib injuries were the result of non-accidental trauma which was inflicted with severe force one to two days prior to

the victim's hospitalization, refuting the appellant's claim of accidental injury. Additionally, the appellant told Detective Crum that either he or Renner must have caused the injuries, saying, "It had to be one of us, I know it was." Renner and Bowman, who also cared for the victim, denied causing the victim's injuries. Moreover, the appellant told Detective Crum that he had "been thinking about some of the things we could be doing if we had not had the baby." We conclude that the foregoing proof amply supports the appellant's conviction on count one.

On count two, the jury found the appellant guilty of "aggravated child abuse of a child six years of age or less, during a period of time at least seven days before April 27th, 2004, on which date the victim suffered a fracture of the upper left forearm and nothing else." At trial, Bowman, Barnes, and Renner recalled a party which took place one week or one and one-half weeks prior to the victim's hospitalization at the apartment of Renner and the appellant. Bowman and Barnes testified the adults were smoking marijuana. The victim, who was in a bedroom, started to cry, and the appellant went into the bedroom. After the appellant went into the bedroom, the victim screamed, loud and long, then fell silent. Medical proof revealed that the fracture to the ulna of the victim's left forearm was inflicted at least seven days before his other injuries, which was consistent with the time frame alleged in count two. The appellant, attempting to explain the older injuries, said that he had dropped the child in the garden on an earlier occasion and also admitted "near misses" on earlier occasions when he was throwing the child in the air. We conclude that the proof also amply supports the appellant's conviction on this count.

III. Conclusion

Based upon the foregoing, we affirm the judgments of the trial court.

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NORMA McGEE OGLE, JUDGE